

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 98-0132 MVE

Motor Vehicle Excise Tax

For Tax Period: 2/28/96 Through 10/31/97

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ISSUE

I. Motor Vehicle Excise Tax - Imposition

Authority: IC 9-13-2-78; IC 9-18-2-1

Taxpayers protest the imposition of the motor vehicle excise tax on their 1995 Isuzu and 1996 Isuzu.

STATEMENT OF FACTS

Taxpayers (Husband and Wife) were residents of Tennessee when they moved to Indiana for Husband to attend graduate school at Indiana University. Taxpayers attempted to maintain their Tennessee residency by filing a nonresident Indiana income tax return in 1995, and claiming their full-year residency status in Tennessee. Husband paid out-of-state tuition rates at Indiana University. The taxpayers voted in Tennessee, maintained their home, and paid property taxes in Tennessee. The Department assessed the motor vehicle excise tax against the taxpayers for their 1995 Isuzu from February, 1996, through October, 1997. Taxpayers purchased a second vehicle (1996 Isuzu) in April, 1997, and the Department assessed the motor vehicle excise tax, on this second vehicle, from April, 1997, through October, 1997. Additional facts will be provided below, as necessary.

I. Motor Vehicle Excise Tax - Imposition

DISCUSSION

Pursuant to IC 9-18-2-1, within sixty days of becoming an Indiana resident, a person must register all motor vehicles owned by that person which will be operated in Indiana. Indiana Code Section 9-13-2-78 defines an Indiana resident as one of the following:

(1) A person who has been living in Indiana for at least one hundred eighty-three (183) days during a calendar year and who has a legal residence in another state. However, the term does not include a person who has been living in Indiana for any of the following purposes:

(A) Attending an institution of higher education.

(B) Serving on active duty in the armed forces of the United States.

(2) A person who is living in Indiana if the person has no other legal residence.

(3) A person who is registered to vote in Indiana.

(4) A person who has a child enrolled in an elementary or a secondary school located in Indiana.

(5) A person who has more than one-half (½) of the person's gross income derived from sources in Indiana using the provisions applicable to determining the source of adjusted gross income that are set forth in IC 6-3-2-2. However, a person who is considered a resident under this subdivision is not a resident if the person proves by a preponderance of the evidence that the person is not a resident under subdivisions (1) through (4).

Taxpayers claim they do not owe the motor vehicle excise tax because they fall under the higher education exception in IC 9-13-2-78(1)(A). Taxpayers claim they did not become Indiana residents until they sold their home in Tennessee and intended to become Indiana residents on June 28, 1997.

The Department finds the Husband is partially covered by the higher education exception. He maintained his Tennessee residency while taking no advantages provided by Indiana residency until June 28, 1997. Wife, however, does not fall under the higher education exception. She moved to Indiana in February, 1996, and was living in Indiana for at least 183 days during the 1996 calendar year (IC 9-13-2-78). As Wife earned more than one-half her income in Indiana and did not attend an institution of higher education, she is not included in the higher education exception. The taxpayers' second car, purchased in April, 1997, should have been registered in Indiana at the time of purchase. Taxpayers did not register either vehicle in Indiana until October, 1997.

FINDING

Taxpayers' protest is sustained in part and denied in part. Taxpayers' first vehicle (1995 Isuzu) was not required to be registered in Indiana until June 28, 1997. Taxpayers' second vehicle (1996 Isuzu) should have been registered in Indiana immediately. The assessment period will be modified to cover June 28, 1997, through October, 1997, for the 1995 Isuzu and April, 1997, through October, 1997, for the 1996 Isuzu.